



The St. Lawrence
Seaway Management
Corporation

Corporation de Gestion
de la Voie Maritime
du Saint-Laurent

TERMS AND CONDITIONS

Construction Purchase Orders

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1 INTERPRETATION

1.1 Unless the context otherwise requires,

1.1.1 “**Applicable Laws**” means any federal, provincial, local and municipal statutes, laws, by-laws, rules, codes, ordinances, and regulations in effect from time to time and made or issued by a governmental authority having jurisdiction over a party to this Contract, which shall include a judgment of a relevant court of law, board, arbitrator or administrative agency.

1.1.2 “**Construction Purchase Order**” means this document and all other documents it refers to, as well as any written specifications, instructions, drawings, designs by the SLSMC for the carrying out of the Construction Purchase Order;

1.1.3 “**Finished Work**” means the supplies, projects or other Work completed in accordance with the provisions of the Construction Purchase Order after it has been accepted by the SLSMC Representative;

1.1.4 “**SLSMC**” means The St. Lawrence Seaway Management Corporation;

1.1.5 “**SLSMC Representative**” means the person designated as such by the SLSMC and any person acting on behalf of the SLSMC as the SLSMC Representative under the Construction Purchase Order;

1.1.6 “**Work**”, means the total construction and related material and services required by the Construction Purchase Order.

2 CHANGES IN SCOPE, ASSIGNMENT AND SUBCONTRACTING

2.1 The Contractor shall not increase or decrease the scope of Work covered by this Construction Purchase Order without the prior written consent of the SLSMC. If the SLSMC at any time during the progress of the Work requires any alteration or addition or omission from the Work contracted for, it shall be done, and in so doing it shall not affect or cancel this Construction Purchase Order and the cost thereof shall be added to or deducted from the Construction Purchase Order price as the case may be, upon reasonable notice.

2.2 The Contractor shall not assign the Construction Purchase Order without the prior written consent of the SLSMC Representative and any assignment made without such consent shall be of no effect.

2.3 The Contractor may subcontract such portions of the Work as is customary in the carrying out of similar work, but must first provide the SLSMC Representative with a list of the subcontractors. The SLSMC Representative may, within six (6) days of receiving the above list, reject the any intended subcontractor.

2.4 Notwithstanding Sections 2.2 and 2.3, no assignments or subcontracting shall relieve the Contractor from any of its obligations under the Construction Purchase Order or impose any liability upon the SLSMC to an assignee or subcontractor.

2.5 The Contractor shall preserve and protect the rights of the parties under the

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Construction Purchase Order with respect to Work to be performed under subcontract, and shall:

- 2.5.1 Enter into contracts or written agreements with subcontractors and suppliers to require them to perform their Work as provided in the Construction Purchase Order;
- 2.5.2 Incorporate the Terms and Conditions for Construction Purchase Order into all contracts or written agreements with subcontractors and suppliers; and
- 2.5.3 Be as fully responsible to the SLSMC for acts and omissions of subcontractors, suppliers, and of persons directly or indirectly employed by them as for acts and omissions of persons directly employed by the Contractor.

2.6 The Contractor shall not subcontract the Work or any part of the Work to another contractor if the said contractor had submitted a bid for the current Construction Purchase Order, was the lowest bidder and was disqualified or withdrew his bid after submission.

3 CONDUCT OF THE WORK

3.1 The Contractor agrees to carry out the Work diligently and to provide efficient supervision and inspection thereof and warrants, without restricting the generality of the foregoing, that the Work is of proper quality, material and workmanship and in full conformity with the specifications, drawings, models or samples, if any, and is fit for the purpose intended.

3.2 Any damage to the Work before delivery or completion of the Work under the Construction Purchase Order shall be borne by the Contractor and all Work under the Construction Purchase Order shall be done at Contractor's risk until completion.

3.3 No materials or parts shall be used, processed or delivered until accepted by the SLSMC Representative.

3.4 The SLSMC and the SLSMC Representative shall have access to the Work and work sites at all times and the Contractor shall provide, at his own expense, assistance and facilities as may reasonably be required for the carrying out of inspections and tests.

3.5 The Contractor shall only be entitled to payment once the Work has been finished in accordance with the Terms and Conditions of the Construction Purchase Order.

4 SPECIFICATIONS, DRAWINGS AND OTHER DOCUMENTS

4.1 All specifications, drawings, and other documents provided by the SLSMC to the Contractor in connection with the Construction Purchase Order shall be used by the Contractor solely for the purpose of carrying out the Work and for no other purpose and shall remain the property of the SLSMC and be returned to the SLSMC upon request.

5 CONFIDENTIALITY AND SECURITY OF INFORMATION

5.1 The Contractor shall only use Confidential Information for purposes of fulfilling the Contractor's obligations pursuant to the Construction Purchase Order and for no other

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purpose; shall hold Confidential Information in confidence; take all reasonable measures to prevent disclosure and unauthorized access; and shall not disclose Confidential Information, without the prior written consent of SLSMC, to any third party other than the Contractor's employees, Subcontractors, contractors or other third parties under similar obligations of confidence who have a need to know such information. The Contractor will return (or, with SLSMC's consent, destroy, and certify such information as destroyed) SLSMC's Confidential Information promptly following SLSMC's request.

- 5.2 Subject to Applicable Laws, the Contractor's obligations of confidence do not apply to information that:
- 5.2.1 is or becomes publicly available through no fault of the Contractor; or
 - 5.2.2 is lawfully disclosed to the Contractor by a third party who is not under any obligations of confidence; or
 - 5.2.3 the Contractor can establish to SLSMC's satisfaction was known to the Contractor prior to the date of disclosure by SLSMC; or
 - 5.2.4 is required by law to be disclosed; or
 - 5.2.5 the Contractor can establish was developed by the Contractor independently of this Contract.

In the event the Contractor is required to disclose Confidential Information by law, the Contractor shall promptly notify SLSMC so that SLSMC has a reasonable opportunity to prevent the disclosure.

- 5.3 When the Contract, the Work, or any information is identified as RESTRICTED R2 by SLSMC, the Contractor shall, at all times, take all measures reasonably necessary for the safeguarding of the information so identified, including such measures as may be further specified elsewhere in the Construction Purchase Order or provided, in writing, from time to time by the SLSMC Representative. Without limiting the generality of any other provision in the Contract, when the Contract, the Work, or any information is identified as RESTRICTED R2, SLSMC shall be entitled to inspect the Contractor's premises and the premises of its Subcontractors or suppliers and any other Person at any tier, for security purposes at any time during the term of the Contract. The Contractor shall comply with, and ensure that any such Subcontractors or suppliers comply with all written instructions issued by the SLSMC Representative dealing with the information so identified, including any requirements that employees of the Contractor, Subcontractors, suppliers and any other Person at any tier submit applications for, or execute and provide declarations in relation to reliability screenings, security clearances and other procedures.
- 5.4 The Contractor shall use reasonable measures to guard or otherwise protect the Work and its site, and protect the Contract, Specifications and Drawings, plans, information, Material, Construction Equipment and real property, whether or not they are supplied by SLSMC to the Contractor, against unauthorized access, loss or damage from any cause.
- 5.5 With respect to any personal information provided by a party to the other party, the party in possession of the personal information shall comply with the federal Personal Information Protection and Electronic Documents Act, (PIPEDA) and any other

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Applicable Laws concerning the protection of privacy.

6 ACCEPTANCE OF WORK AND DELIVERY

- 6.1 The SLSMC Representative will accept the Work and will have full power to reject or refuse any Work, parts or materials that he or she considers not in accordance with the requirements of the Construction Purchase Order. The SLSMC Representative will also be the sole judge as to the meaning or intention of the specifications.

7 WARRANTY

- 7.1 Without restricting any other term of the Construction Purchase Order or any conditions, warranty, or provision implied or imposed by law, the Contractor shall, if requested by the SLSMC to do so at any time within twelve (12) months from date of delivery as specified in the Construction Purchase Order, repair or replace, at its own expense, any Work and each article or part and any material included in the Work which becomes defective or fails to conform to Construction Purchase Order requirements as a result of faulty or inefficient manufacture, material or workmanship, such replacement to be made by delivering the replaced Work or material to the delivery point set out in the Construction Purchase Order.

8 TIME IS OF THE ESSENCE

- 8.1 Time is of the essence in the performance of the Work provided that the time for completing any of the Work which has been or is likely to be delayed by reason of force majeure or other cause beyond the reasonable control of the Contractor shall be extended by a period equal to the length of the delay so caused, provided that prompt notice in writing of the occurrence causing or likely to cause such delay is given to the SLSMC. The SLSMC Representative may cancel the Construction Purchase Order if the Contractor fails to comply with this requirement.

9 LABOUR LAWS

- 9.1 The Contractor shall comply with all applicable labour laws, and with all health conditions and requirements, from time to time applicable to the Work.

10 SUSPENSION OF WORK AND CHANGE IN SPECIFICATIONS – TERMINATION OF THE CONSTRUCTION PURCHASE ORDER

- 10.1 The SLSMC may at any time and from time to time order a suspension of the Work, in whole or in part, and make modifications, of changes in or additions to the Specifications, time of delivery. SLSMC may terminate the Construction Purchase Order, in whole or in part, at any time by giving a notice of termination in writing to the Contractor. All directions given by the SLSMC with respect to the foregoing shall be complied with by the Contractor.
- 10.2 If any such termination, suspension, modification, change or addition results in an increase or decrease to the Cost of Work, the Construction Purchase Order price shall be adjusted accordingly provided that the Contractor shall in no event be entitled to compensation for any loss of anticipated profits (except that in the event of any change which results in a substantial part of the Work theretofore performed by the Contractor shall be entitled to payment of an amount representing a fair and reasonable profit in

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respect of such discarded Work) and provided further that minor increases or decreases in cost shall be disregarded.

11 NOTICE

- 11.1 Any notice to the Contractor hereunder shall be effectively given if sent by letter or by facsimile addressed to the Contractor at his address as given in the Construction Purchase Order or, if no address is so given, at his address as shown by the records of the SLSMC. Any notice so given shall be deemed to have been received by the Contractor at the time when in the ordinary course such letter or facsimile should have reached its destination.

12 INDEMNIFICATION

- 12.1 The contractor shall defend, indemnify and save harmless the SLSMC, its representatives and His Majesty the King in right of Canada harmless from and against all claims, demands, losses, costs of any nature including judicial and extra-judicial costs arising from any legal action, damages, actions, suits, or proceedings and by whomever made, brought or prosecuted and in any manner based upon, occasioned by or attributable to any injury to or death of a person or damage to or loss of property resulting from any imprudence or lack of skill or any willful or negligent act, omission or delay on the part of the contractor, his representatives, employees, servants, agents, suppliers, Subcontractors and their subcontractors, or any other person under his jurisdiction in performing the Work or as a result of the Work.
- 12.2 The Contractor shall also defend, indemnify and save harmless the SLSMC, its representatives and His Majesty the King in right of Canada from and against all costs, charges and expenses whatsoever that the SLSMC sustains or incurs in or about all claims, actions, suits and proceedings for the use of the invention claimed in a patent, or infringement or alleged infringement or any patent or any registered industrial design or any copyright or any other kind of intellectual property resulting from the performance of the Contractor's obligations under the contract, and in respect of the use of or disposal by the SLSMC of anything furnished pursuant to the Construction Purchase Order.
- 12.3 The Contractor's liability to indemnify or reimburse the SLSMC under the Construction Purchase Order shall not affect or prejudice the SLSMC from exercising any other rights under law.

13 NO PUBLICITY OR COMMUNICATION WITH MEDIA

- 13.1 The Contractor may not, without SLSMC's prior written authorization: (a) use or publish, for any purpose whatsoever, the name, image, logo or trademark of SLSMC; (b) advertise the Contractor's involvement in this Construction Purchase Order or (c) post in or around the Workplace, any signs other than those required by Applicable Laws. Any third-party, including media, request for information concerning the Contract, Works or services must promptly be forwarded to the SLSMC Representative for handling. The Contractor and the Contractor Personnel are strictly prohibited, under any circumstance, to speak to and address the media for any reason in connection with their contractual duties. The foregoing shall be subject only to Applicable Laws, including ongoing disclosure requirements under securities law. The Contractor shall ensure that the Contractor Personnel are aware of the requirements of this Section, including the

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following: if the Contractor Personnel are approached by members of the media, they shall decline comment and refer the media representatives to SLSMC.

14 RESERVED

15 RECORDS TO BE KEPT BY CONTRACTOR

15.1 The Contractor shall

15.1.1 maintain full records of his estimated and actual cost of the Work together with all tender calls, quotations, contracts, correspondence, invoices, receipts and vouchers relating thereto;

15.1.2 make all records and material referred to in Section 15.1.1 available to audit and inspection by the SLSMC Representative or by persons acting on behalf of either or both of them, when requested;

15.1.3 allow any of the persons referred to in Section 15.1.2 to make copies of and to take extracts from any of the records and material referred to in Section 15.1.1; and

15.1.4 furnish any person referred to in Section 15.1.2 with any information he may require from time to time in connection with such records and material.

15.2 The records maintained by the Contractor pursuant to Section 15.1.1 shall be kept intact by the Contractor until the expiration of two (2) years after the date of delivery as specified in the Construction Purchase Order or until the expiration of such other period of time as the SLSMC Representative may direct.

15.3 The Contractor shall cause all subcontractors and all other persons directly or indirectly controlled by or affiliated with the Contractor and all persons directly or indirectly having control of the Contractor to comply with Sections 15.1 and 15.2 as if they were the Contractor.

16 TERMINATION UPON EXPIRATION OF CMA AGREEMENT

16.1 The SLSMC is a party to an agreement with Canada pursuant to Section 80(5) of the Canada Marine Act (the "CMA Agreement") for the operation of the Seaway. The CMA Agreement is set to expire on March 31, 2024. SLSMC's authority to assume contractual obligations beyond March 31, 2024 is subject to the renewal of the CMA Agreement.

16.2 If the CMA Agreement is not renewed, this Construction Purchase Order may be assigned to a SLSMC successor where agreed by the Contractor and successor. In the absence of an assignment, this Construction Purchase Order shall automatically terminate upon expiration of the CMA Agreement. SLSMC shall pay for any Work performed up to the effective date of termination or assignment. Notwithstanding anything to the contrary in the Construction Purchase Order, the Contractor shall not be entitled to any payment for costs not incurred or for Work not performed, including, without limitation, any lost profits relating to Work not performed.